IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NOS.132, 133 AND 134 OF 2004

CRIMINAL MISCELLANEOUS APPLICATION NO.132 OF 2004

Mr. Silvester Dias,
44 years of age,
married, r/o H.No.79,
Santarxet, Aldona,
Bardez, Goa.
Represented through his
wife Mrs. Emilia Dias,
R/o H.No.79, Santarxet,
Aldona, Bardez, Goa. ... Applicant

versus

The State
Through the Public Prosecutor,
Panaji, Goa. ... Respondent

CRIMINAL MISCELLANEOUS APPLICATION NO.133 OF 2004

Mr. Milton Fernandes,
22 years of age, married,
S/o Santan Fernandes,
R/o H.No.683, Santarxet,
Aldona, Bardez, Goa.
Represented through his
wife Mrs.Assumptina Fernandes,
R/o H.No.683, Santarxet,
Aldona, Bardez, Goa. ... Applicant

versus

The State
Through the Public Prosecutor,
Panaji, Goa. ... Respondent

CRIMINAL MISCELLANEOUS APPLICATION NO.134 OF 2004

Mr. Joaquim Hilary Fernandes,
31 years of age, married,
R/o Santarxet, Aldona,
Bardez, Goa.
Represented through his
wife Mrs. Fatima Coelho E.
Fernandes, R/o Santarxet,
Aldona, Bardez, Goa. ... Applicant

versus

The State
Through the Public Prosecutor,
Panaji, Goa. ... Respondent

Mr. G. Kanekar, Advocate for the Applicants in all the three Applications.

Mr. S. N. Sardessai, Public Prosecutor for the State/Respondent in all the three Applications.

CORAM : N. A. BRITTO, J.

DATE : 18TH JUNE, 2004.

ORAL ORDER

The Applicants herein are accused in Cr.No.15/2004 whose case has been committed to the Court of Sessions, Panaji, under Sections 341 and 302 r/w 34 I.P.C. and whose Bail Applications have been rejected by the learned Sessions Judge, Panaji by Order dated 7th May, 2004 and the said Accused are now before this Court for the grant of bail.

2. The learned Sessions Judge, Panaji, in rejecting the bail to the said Accused has observed that the offences with which the said Accused have been charged are of serious nature and, therefore, the case was not fit to admit them to bail.

3. The facts, as disclosed from the papers of the investigations carried out, show that a brawl in the Bar known as Bar Bhagat belonging to Prabhanand Bhagat around midnight of 21/22nd January, 2004, ultimately led to the unfortunate death of Remedios Almeida on 3rd February, 2004. The incident initially started in the said Bar between Edwin D'Souza and the said Accused. It is alleged that all the three Accused started passing comments when the said Edwin D'Souza was talking to one Godfrey D'Cruz, who was in the said Bar and then followed by assault to the said Edwin D'Souza with slaps and fist blows. At this stage, Accused No.2, Milton Fernandes, is said to have lifted a plastic chair to assault the said Edwin D'Souza and then caught his neck and tore his banyan. This assault on Edwin D'Souza was followed by assault on the said Godfrey D'Cruz and it is at this time that the said Remedios Almeida(deceased) intervened asking the Accused why they were fighting as they were all relatives and at this time, Accused No.2, Milton Fernandes, Accused Hilary/Joaquim and Felix/Silvester assaulted the said Remedios Almeida with fist blows,

slaps and kicks questioning him as to who he was to interfere. At this stage, glasses and bottles from the Bar are alleged to have been broken by the said three Accused namely Milton Fernandes, Hilary/Joaquim Fernandes and Felix Silvester who then were removed out of the Bar by the said Prabhanand Bhagat, the owner of the Bar. Thereafter, the deceased Remedios Almeida went out of the Bar and he was again assaulted by all the three Accused with fist blows, kicks and slaps and according to one witness by name Salvador Rodrigues also with soda bottles but according to another witness by name Baptist Barbosa, it is only Accused Milton Fernandes who removed a soda bottle from a crate which was outside the Bar and assaulted the said Remedios Almeida while the other Accused by names Hilary/Joaquim and Felix/Silvester caught the said Remedios Almeida by both the hands and pushed him on an electric pole who then fell down unconscious with bleeding injuries.

4. The Autopsy Report of the deceased shows that the deceased had only one ante mortem injury namely a bruise on the frontal region of the head. However, the Medical Report has opined that the deceased died due to blunt force impact by an object vide the said injury which was sufficient to cause death in ordinary course of nature.

5. Upon information having been received by Smt. B. Rodrigues, the sister of the deceased from the said Edwin D'Souza, she filed a complaint which was registered at about 13.15 hours of 23rd January, 2004 and which came to be registered at that stage under Section 341 and surprisingly also under Section 326 I.P.C. It also came to be registered only against two Accused namely Silvester/ Felix and Milton.

6. Upon the death of the deceased Remedios Almeida on 3rd February, 2004, the said complaint was converted from Sections 341, 326 I.P.C. to Sections 341, 302 I.P.C.

7. At the time of arguments, Mr. G. Kanekar, learned Counsel of the Accused has submitted that at the initial stage, the said complaint from the said Mrs. Rodrigues was chosen by the Police not to be registered under Section 307 I.P.C. which shows that the Accused never intended to cause death of the deceased. It is his submission that the offences alleged at the most may come under the purview of Section 304 I.P.C. Mr. Kanekar, learned Counsel has next submitted that although bottles were available in plenty, initially when the first part of the incident took place none of the Accused had chosen to use the same and this shows that the Accused did not intend to commit any serious offence. Again, Mr.

Kanerkar, learned Counsel, has submitted that it is only Accused Milton Fernandes who allegdly used a soda bottle to assault the deceased outside the Bar and, therefore, the other Accused could not be prosecuted with an aid of Section 34 I.P.C. Mr. Kanekar, learned Counsel has placed reliance on the cases of **Bhagirathsinh Judeja** v. **State of Gujarat**(AIR 1984 SC 372) and **Babubhai Ranchodbhai Patel and another** v. **State of Gujarat**(AIR 1994 SC 1400).

8. The case of **Bhagirathsinh Judeja** v. **State of Gujarat**(supra) was a case pertaining to cancellation of bail though the Hon'ble Supreme Court also observed that the trend today is towards granting bail because it is now well-settled by a catena of decisions of that Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed and the only material considerations are whether the Accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. The case of **Babubhai Ranchodbhai Patel and another** v. **State of Gujarat**(supra) was a case which dealt with the merits of the case at the conclusion of the trial. It was a case where the Accused inflicted knife injury on the spinal region of the deceased by one Accused in a sudden quarrel and the Hon'ble Supreme Court observed that the other Accused

could not have shared the common intention to commit the murder of the deceased.

9. The considerations for the grant of bail in non bailable cases are one too many and most of them have been enumerated by the Hon'ble Supreme Court in the case of **The State** v. **Captain Jagjit Singh**(AIR 1962 SC 253). However, the most overriding considerations could be said to be the nature and gravity of the circumstance in which the offence has been committed, likelihood of the Accused fleeing from justice and tampering with prosecution witnesses so as not to ensure a fair trial. I have already reproduced the genesis of the incident how it initally started and how it ultimately ended in the assault of the deceased by one of the Accused with a soda bottle.

10. Mr. Kanekar, learned Counsel has also pointed out that there was not even a fracture of the frontal bone of the deceased which will suggest that the said bottle was not hit with force. Mr. Kanekar, learned Counsel also brought to my notice that the deceased was a patient with liver cirrhosis, as reflected in the Autopsy Report. Considering the totality of the facts in which the offences are alleged to have been committed by Accused and the nature of evidence in my opinion, the

case against the Accused does not appear to be very serious wherein the Accused will be called upon to receive extreme penalties.

11. I am, therefore, of the opinion that this is a fit case to admit the Accused to bail since otherwise further detention of the Accused would amount of punishment before trial. The fact that the Accused are from the same village and, therefore, may try to interfere with the witnesses could be taken care of by imposing certain conditions but this in itself would not be sufficient to deny bail to the Accused, apart from the fact that the said allegations do not appear to have been made based on any foundation.

12. As a result, the Applications deserve to succeed. Each of the Accused shall be released on bail upon execution of a Bond of Rs.15,000/- each with one surety in the like amount to the satisfaction of the learned Sessions Judge, Panaji, before whom the case is pending and with a further condition that the Accused shall not reside in Aldona village until the main prosecution witnesses who hail from Aldona are examined in the trial of the said case.

N. A. BRITTO, J.

RD.